

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

CARL McINTOSH,)	
)	
Plaintiff,)	
vs.)	No. 1:06-cv-1700-DFH-WTL
)	
R. V. VEACH, et al.,)	
)	
Defendants.)	

Entry Concerning Selected Matters

The court, having considered the above action and the matters which are pending, makes the following rulings:

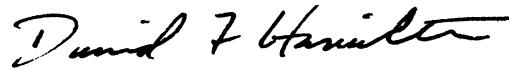
1. The plaintiff's motion to serve defendants first set of interrogatories (dkt. 32) is **denied**, because the defendants have not appeared in this action, process has not been issued, and the commencement of discovery under these circumstances would be premature and unfruitful.

2. The plaintiff's request seeking correction of the Entry in which he was directed to file an amended complaint (dkt. 31) is directed to the Entry of December 20, 2006. The request is **denied** for two reasons. *First*, the Entry itself was issued to permit the plaintiff to supplement his complaint in such a manner as to permit him to state a viable claim for relief and survive, to the extent possible, the screening required by 28 U.S.C. § 1915A(b) because a complaint is sufficient only to the extent that it "contain[s] either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1969 (2007) (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)). *Second*, the intervening proceedings have long since made compliance with or even issuance of the Entry of December 20, 2006, a moot point. Most recently, the plaintiff was directed to file a second amended complaint and was given through December 19, 2007, in which to do so. The directions that he do so were equally warranted in order that the action can proceed. The plaintiff's requests that counsel be appointed, that process be issued and served on the defendants, and that discovery be commenced are all premature and hence are also **denied**.

3. As noted, the plaintiff was directed to file a second amended complaint. That pleading is now more than a month overdue. The plaintiff shall have **through February 8, 2008**, in which to show cause why the action should not be dismissed for failure to prosecute. If the plaintiff responds by indicating his desire to proceed with this action, he is **informed** that no response will be deemed sufficient unless accompanied by the second amended complaint which was directed to be filed in the Entry issued on December 11, 2007.

4. The clerk shall include a copy of the docket sheet with the plaintiff's copy of this Entry.

So ordered.



DAVID F. HAMILTON, Chief Judge
United States District Court

Date: 1/24/2008

Distribution:

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